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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DOUGLAS JOSEPH HOHLBEIN and ROBERT MOSKOVICH

Appeal 2019-005969
Application 14/847,837
Technology Center 3700

Before JOHN C. KERINS, LISA M. GUIJT, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1, 4, 8–11, 14–19, and 21–25. Appeal Br. 2. The Examiner withdrew the rejection of claims 8–11, 24, and 25 in the Answer (*see* Ans. 7), so only claims 1, 4, 14–19, and 21–23 stand rejected on appeal (*see id.* at 3–7). We have jurisdiction under 35 U.S.C. § 6(b).

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as the Colgate-Palmolive Company. Appeal Br. 2.

We AFFIRM.

CLAIMED SUBJECT MATTER

The application is titled “Oral Care Implement” and describes a need “for an oral care implement [(e.g., a toothbrush)] that readily informs the consumer of the unique benefits of using that oral care implement.” *See* Spec. 1, Title, ¶ 1. Claims 1, 8, and 18 are independent. Appeal Br. 13–15 (Claims App.). We reproduce claim 1, below, which is illustrative of the claimed subject matter:

1. An oral care implement comprising:
 - a body comprising a handle portion and a head portion;
 - at least one bristle mounted to and extending from the head portion, the at least one bristle having an oral care feature;
 - the body comprising a core component and a sheath component surrounding the core component;
 - the core component comprising a structural feature that corresponds to the oral care feature and that is visible through the sheath component;
 - wherein the oral care feature is a tapered bristle tip portion and the structural feature is a tapered end portion; or
 - wherein the oral care feature is intertwined bristle strand components and the structural feature is intertwined core strand components.

Id. at 13 (Claims App.).

REFERENCES²

The references relied upon by the Examiner are:

Name	Reference	Date
Driesen	US 6,141,819	Nov. 7, 2000
Weihrauch	US 6,163,918	Dec. 26, 2000
Williams	US 2005/0050662 A1	Mar. 10, 2005
Hohlbein	US 2007/0209263 A1	Sept. 13, 2007

REJECTIONS³

The following rejections are before us on appeal:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis
1, 4, 14–17	103	Driesen, Williams
18, 19, 21–23	103	Hohlbein, Weihrauch

Ans. 3–7.

OPINION

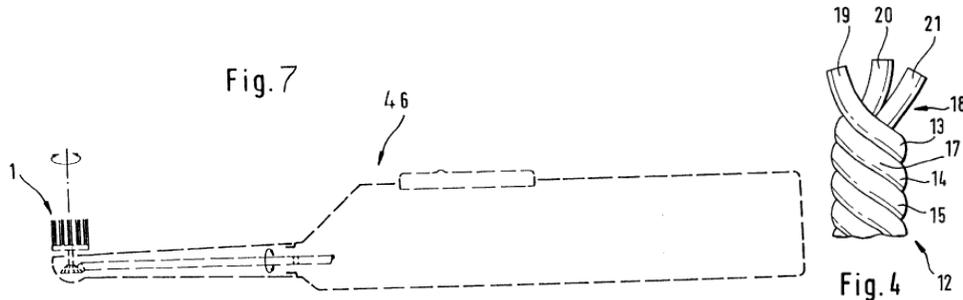
I. Claims 1, 4, and 14–17 – Unpatentable Over Driesen and Williams

The Examiner rejects claims 1, 4, and 14–17 as unpatentable over Driesen in view of Williams. Final Act. 4. Appellant argues claims 1, 4, and 14–17 as a group. *See* Appeal Br. 4–5 (“Appellants will not be separately arguing the patentability of dependent claims 4, 9-11, 14-17, 19, and 21-25. Thus, Appellants acknowledge that dependent claims 4, 9-11, 14-17, 19, and 21-25 will stand or fall with independent claims 1, 8, and 18.”).⁴ We select claim 1 as the representative claim, with dependent claims 4 and 14–17 standing or falling with claim 1. 37 C.F.R. § 41.37(c)(1)(iv)(2018).

In rejecting independent claim 1, the Examiner relies on Driesen for disclosing an oral care implement comprising several of the claimed

² We do not list references relied upon in withdrawn rejections. Ans. 7.

features, citing in-part Driesen's Figures 4 and 7 (*see* Final Act. 3), copies of which we reproduce, below:



Driesen's Figure 7 (left) is a schematic view of a field of bristles on a toothbrush head. Driesen 4:14–15. Driesen's Figure 4 (right) is a schematic view of the free end of bristles. *Id.* at 4:9–10. In citing these figures, the Examiner finds that Driesen has “at least one bristle having an oral care feature,” namely, “intertwined bristle strand components.” Final Act. 3 (citing in-part Driesen 4:30–54).

The Examiner acknowledges, however, that Driesen does not disclose “that the body comprises a core component and a sheath component surrounding the core component.” *Id.* at 3–4.

To address this limitation, the Examiner relies on Williams, finding that Williams teaches a handle with a core component that “comprises a structural feature of intertwined core strand components.” *See id.* at 4 (citations omitted). We reproduce Williams's Figure 3 below:

³ We do not list those rejections withdrawn by the Examiner. Ans. 7. Also, claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Final Act. 11.

⁴ The rejections of independent claim 8, along with its dependent claims, were withdrawn by the Examiner. *See* Ans. 7; *see also id.* at 3–7 (listing the grounds of rejection maintained by the Examiner).

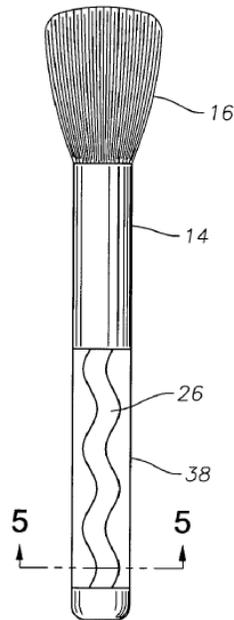


Fig. 3

Williams’s Figure 3 is a “perspective view of a second embodiment of a brush handle.” Williams ¶ 13. The Examiner finds that the handle of this embodiment has a core component and sheath component in which “the core component comprises a structural feature of intertwined core strand components,” namely, intertwined segments 29. Final Act. 4 (citing Williams ¶¶ 25, 26, 28).

In combining Driesen with Williams, the Examiner reasons that a skilled artisan would have substituted Driesen’s handle for one taught by Williams, including Williams’s “core component . . . visible through the sheath and has colored intertwined core strand components . . . in order to provide aesthetically pleasing effects for consumers.” *Id.* at 4–5.

In contesting the rejection of claim 1, Appellant presents two arguments.

First, Appellant argues, “Nowhere in either Driesen or Williams is there any teaching of the desirability of pairing a[n] intertwined core

component of Williams with the intertwined strand feature of Driesen.”

Appeal Br. 8. Appellant argues that the Examiner’s reasoning—providing a pleasing visual effect for consumers—is based on impermissible hindsight. *See id.* Appellant submits that “other countervailing considerations like cost reduction may preclude incorporation of an ornate handle incorporating the helix of Driesen onto an already expensive toothbrush incorporating intertwined bristle strand components.” *Id.* at 9.

Appellant’s first argument is not persuasive.

Williams teaches that its “helical flight” 26 “can be seen through brush handle” 38. Williams ¶ 25. Williams further discloses, “As an advantage of the present invention, the brush handle and resulting brush will be aesthetically pleasing to consumers.” *Id.* ¶ 27. We find this disclosure to teach the proposed combination, and because Williams teaches that the feature would have been aesthetically pleasing, Appellant’s hindsight argument is not persuasive.

As to Appellant’s argument that the modification would have added cost that would have discouraged a skilled artisan from making the modification (*see* Appeal Br. 9), it is not sufficient to obviate a reason to combine when a different course of action would have advantages over another. *Winner Int’l Royalty Corp. v. Wang*, 202 F.3d 1340, 1349 n.8 (Fed. Cir. 2000) (“The fact that the motivating benefit comes at the expense of another benefit, however, should not nullify its use as a basis to modify the disclosure of one reference with the teachings of another. Instead, the benefits, both lost and gained, should be weighed against one another”). In other words, *even if* the proposed modification would have added undesirable cost to Driesen’s handle, the modification would have improved

Driesen’s design by making it more aesthetically-pleasing to consumers, as taught by Williams (*see, e.g.*, Williams ¶¶ 25, 27). Moreover, Appellant fails to provide any evidence to support its position that the modification would have added so much additional cost as to discourage a skilled artisan from making the change. *See* Appeal Br. 9.

Second, Appellant argues, “Williams fails to disclose intertwined strand components in a core” and that “there is no basis whatsoever for the assertion that [Williams’s] three segments are intertwined. It seems equally likely that they may extend without rotating about the central axis of the helix.” *Id.*

Appellant’s second argument is not persuasive. Williams discloses that its helical flight 26 can be partitioned into a plurality of segments. Williams ¶ 25. We agree with the Examiner’s finding that “segments 29 are twisted in a helical flight at 26 as shown in Figures 3 and 5 and best described in paragraphs 0025-0036, each segment 29 is intertwined with the other segments 29.” Ans. 8. Indeed, by definition, a helix is “a spiral form or structure.” The American Heritage Dictionary, Fifth Edition (©2020), <https://www.ahdictionary.com/word/search.html?q=helix> (last visited June 2, 2020).⁵ The record supports the Examiner’s finding that Williams’s three segments are intertwined to form a helical flight, satisfying the claimed limitation. *See* Ans. 8.

Accordingly, we affirm the rejection of independent claim 1, as well as claims 4 and 14–17, which fall with claim 1, as unpatentable over Driesen and Williams.

⁵ A copy of this definition is appended to this opinion.

II. Claims 18, 19, and 21–23 — Unpatentable over Hohlbein and Weihrauch

The Examiner rejects claims 18, 19, and 21–23 as unpatentable over Hohlbein and Weihrauch. Final Act. 7–9. Appellant argues claims 18, 19, and 21–23 as a group. *See* Appeal Br. 4–5 (“Appellants will not be separately arguing the patentability of dependent claims 4, 9–11, 14–17, 19, and 21–25. Thus, Appellants acknowledge that dependent claims 4, 9–11, 14–17, 19, and 21–25 will stand or fall with independent claims 1, 8, and 18.”). We select claim 18 as the representative claim, with dependent claims 19 and 21–23 standing or falling with claim 18. 37 C.F.R. § 41.37(c)(1)(iv)(2018).

In rejecting independent claim 18, the Examiner finds that Hohlbein discloses several of the claimed features, citing its Figures 2 and 3 (Final Act. 7), which we reproduce below:

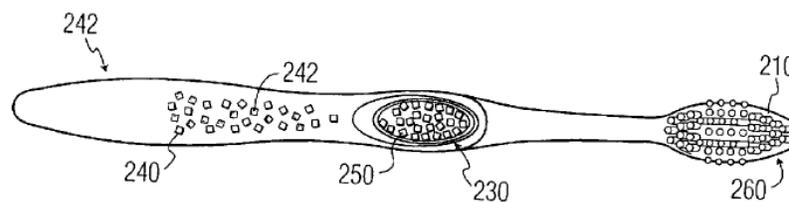


FIG. 2

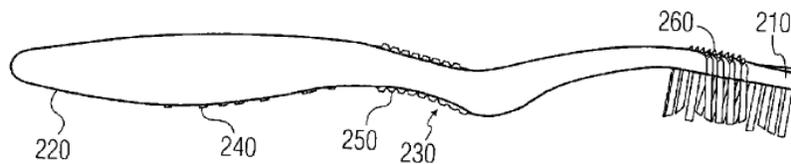


FIG. 3

These figures illustrate a front view (Figure 2) and a side view (Figure 3) of a toothbrush. *See* Hohlbein ¶ 7. The Examiner finds that Hohlbein discloses the claimed handle portion 220 and head portion 210, with at least one bristle mounted to and extending from the head portion. Final Act. 7

(citing Hohlbein Fig. 2, ¶ 19). The Examiner further finds that Hohlbein discloses visible structural material 242, which are the “particulates dispersed in a carrier material of the body” that “correspond[] to an oral care feature” 100, 193 “to reinforce this combination of products” and to “strengthen the link between distinct features being aligned.” *Id.* (quoting Hohlbein ¶ 19).

The Examiner acknowledges, however, that Hohlbein does not disclose that its “oral care feature is an additive *within* the at least one bristle.” *Id.* To address the missing limitation, the Examiner relies on Weihrauch and finds that “Weihrauch teaches toothbrush bristles containing an oral care feature that is an additive within a bristle” for adding “slight abrasiveness and an increased reaming action to remove plaque from teeth.” *Id.* at 7–8 (citing Weihrauch 2:35–40, 5:1–10). In combining Hohlbein with Weihrauch, the Examiner reasons that a skilled artisan would have modified at least one of Hohlbein’s bristles to include an oral care feature that is an additive within the bristle, as taught by Weihrauch, so that the bristle “is specifically designed for improved reaming during the brushing of teeth.” *Id.* at 8. Appellant does not contest this aspect of the rejection. *See* Appeal Br. 11.

Rather, in contesting the rejection of claim 18, Appellant argues that the Examiner has failed to show particulates dispersed in a carrier material of the body. *Id.* (referencing arguments made in connection with claim 8). Appellant submits that Hohlbein’s “features are not particulate, but are square shaped protuberances and recesses formed by the shape of the molds.” *Id.* at 11 (presenting arguments made in relation to claim 8).

Appellant's argument is not persuasive. Hohlbein's Figure 2, reproduced above, along with its accompanying description in paragraph 19, disclose "strip-like features" 242 embedded in a clear or translucent handle material. *See* Ans. 9 (finding the same in referencing Figure 2 and quoting Hohlbein ¶ 19). Indeed, paragraph 19 of Hohlbein teaches, "strip-like features 240, 242, 250 could be represented in a number of ways, such as outwardly or inwardly molded features in the handle, and/or *embedded in a clear or translucent handle material*, offering similar visibility to the strip-like features." *See* Hohlbein ¶ 19 (emphasis added). Hohlbein further discloses that these strip-like features provide visual cues to the consumer, such as reminding the consumer to use the toothbrush with a second product, such as breath-freshening strips. *See id.* We agree with the Examiner that Hohlbein's strip-like features 242 embedded within the clear or translucent toothbrush handle reasonably satisfies the claimed "body comprising a visible structural feature that corresponds to an oral care feature . . . and the structural feature is particulates dispersed in a carrier material of the body." Appeal Br. 15 (Claims App.).

Accordingly, we affirm the rejection of independent claim 18, as well as claims 19 and 21–23, which fall with claim 18, as unpatentable over Hohlbein and Weihrauch.

CONCLUSION

The Examiner's rejections of claims 1, 4, 14–19, and 21–23 are affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Reversed	Affirmed
1, 4, 14–17	103	Driesen, Williams		1, 4, 14–17
18, 19, 21–23	103	Hohlbein, Weihrauch		18, 19, 21–23
Overall Outcome				1, 4, 14–19, 21–23

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED